The Federal Report

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The Month in Washington: November 2007

With Congress absent for two weeks, November was not a particularly productive month on Capitol Hill legislatively. Republican opposition continued to stall tax legislation to address the impending expansion of the Alternative Minimum Tax to millions more taxpayers in 2008, while efforts to find a resolution to the impasse over the State Children's Health Insurance Program (SCHIP) were unsuccessful. In a sign of the continuing level of partisan rancor, Congressional leaders did not trust the President enough to even officially recess for Thanksgiving, fearing Mr. Bush would use the opportunity to make recess appointments. However, for CalPERS, November was one of the busiest months on record in terms of formal Federal activity. In fact, if Halloween is allowed to be included, there were three appearances by CalPERS representatives before Congressional Committees during this 31-day period.

Issues and Events

Shareholders Lose SEC Proxy Access Showdown; Hill Reacts

Taking advantage of Congress' absence from Washington, the Securities and Exchange Commission (SEC) has voted to once again permit corporations to bar investors from offering bylaw amendments that would establish procedures permitting shareowners to include in the corporate proxy materials their nominees for the board of directors. The action effectively overturns the 2006 *AFSCME v. AIG* decision, under which investors could offer such bylaw amendments during the last proxy season. SEC Chairman Chris Cox claimed the move was necessary in order to provide clarity for the upcoming proxy season, and promised renewed efforts to expand shareholder access next year. However, shareholder rights advocates decried the decision, and House and Senate leaders also expressed dismay with precipitous action taken by a short-handed Commission. Whether Congress will move to block the new rule is unclear.

Chairman Cox decided to take action on the SEC's so-called "short rule" proposal addressing proxy access despite strong public objections from Congress and investors, and joined with his two fellow GOP Commissioners (Paul Atkins and Kathleen Casey) to reinstate the SEC's staff interpretation of Rule 14a-8(i)(8) by a 3-1 vote on November 28, 2007. Annette Nazareth, the sole remaining Democratic Commissioner on the 5-member panel (which currently has one vacancy), strongly objected.

Chairman Cox said the action "maintains the status quo of the past decade," and was needed in order to avoid uncertainty. "If the Commission did nothing, then there would be no clear and authoritative interpretation of our rules," Cox asserted. However, Commissioner Nazareth sharply disagreed, calling the discussion of uncertainty "a post-hoc rationalization of a path that was ill-conceived in the first place."

Two weeks earlier, Cox heard the same opposing arguments from members of the Senate Banking Committee in a hearing called to object to the SEC's impending action at which CalPERS was asked to testify. Dennis Johnson, CalPERS' Senior Portfolio Manager for Corporate Governance, joined other investor representatives, including the Council of Institutional Investors (CII) and the International Corporate Governance Network, in urging the SEC not to act precipitously to reverse shareholder advances provided by the *AFSCME v. AIG* decision. As CalPERS' testimony put it, Chairman Cox could address any alleged uncertainty just as easily by codifying the court ruling as by reversing it.

The SEC Chairman acknowledged that more needed to be done to address legitimate investor concerns, and the SEC did not take up the so-called "long rule" that would have provided the opportunity for shareowners to override the Rule 14a-8(i)(8) bar in certain instances – but which has also been strongly criticized as deeply flawed as written. Instead, Cox promised to "re-open this discussion in 2008 to consider how to strengthen the proxy rules to better vindicate the fundamental state law rights of shareholders to elect directors."

However, Commissioner Nazareth spoke for many investor groups when she noted "I do not see a principled way to vote for the non-access release and claim to be supportive of shareholder rights in the longer term." Nazareth, who has also announced that she will be leaving the SEC in the near future, argued that "if this amendment were truly intended to be a temporary stopgap measure, then it would have a sunset provision." It does not, she noted, stressing that "Ultimately, our votes here today are the actions that matter, not our unenforceable aspirations for change."

Both Congressman Barney Frank (D-MA), Chairman of the House Financial Services Committee, and Senator Chris Dodd (D-CT), Chairman of the Senate Banking Committee, issued press releases decrying the SEC's actions. Noting that the SEC's proposals generated an "unprecedented response and concerns," as evidenced by a record 34,000-plus public comments -- the overwhelming majority of which were in opposition to the proposals -- Senator Dodd said "I would have hoped that the Commission would not have moved forward until current vacancies at the Commission had been filled."

Congressman Frank expressed his disappointment with the Commission's action, which he said "leave shareholders with inadequate recourse to influence insular boards that are unresponsive to shareholder concerns." He also believes that the Commission should have waited until it was at full membership and was able to deal comprehensively with the issue of proxy access. "There was no need to take this piecemeal approach to a problem that should be dealt with comprehensively, as the Commission itself has recognized by proposing broader changes to the proxy access rules," Frank pointed out. "The result of today's vote is a step backwards for shareholders," the Congressman concluded.

Two names have reportedly now been forwarded by Senate Democrats to the White House to fill these vacancies: Luis Aguilar, a former SEC staff attorney and currently a securities lawyer at McKenna Long & Aldridge in Atlanta; and Elisse Walters, formerly a Deputy Director of the SEC's Division of Corporation Finance, then General Counsel of the CFTC, and currently Senior Executive Vice President, Regulatory Policy & Programs, for the Financial Industry Regulatory Authority (FINRA, formerly the NASD). However, whether President Bush -- and his supporters at the Business Roundtable -- will now feel any urgency to take action on these vacancies is uncertain at best, and, in the view of many, very unlikely. And without the Democratic seats on the SEC filled, it will be virtually impossible for Chairman Cox to advance any new proxy access proposals next year.

So what happens now? AFSCME announced on the same day as the SEC's action that its Employees Pension Plan along with other public pension plans had filed binding bylaw amendments to establish proxy access procedures at Bear Stearns and JP Morgan based on "concerns regarding the mismanagement of sub prime credit issues and risk exposure." (The Bear Stearns proposal was co-filed with the New Jersey Division of Investments and the Office of the North Carolina State Treasurer. The North Carolina Treasurer is also a filer at JP Morgan Chase.)

AFSCME intends to file additional proposals in the coming weeks. If the AFSCME target companies choose to ask the SEC for no-action relief rather than placing the proposals in their proxy materials, then AFSCME says they "are prepared to litigate to defend the AIG decision."

In addition to this litigation strategy, there have also been some indications that further Congressional action could also be forthcoming. Whether this would be in the form of an actual amendment to the Securities laws, or a rider placed on the SEC's appropriations that would bar the agency from enforcing the new rule is unclear. Regardless, any such action would be unlikely to occur in time to affect the upcoming proxy season.

The SEC also voted on November 28th to adopt a new Rule 14a-17 to provide liability protection for a shareholder, company, or third party on behalf of a shareholder, or company that establishes or maintains an electronic shareholder forum, regarding statements or information provided by a third party participating in the forum. The goal of this new rule, according to Chairman Cox, is to "spark the growth of online forums for shareholders, and stimulate experimentation and innovation in communications between shareholders and their companies." The forums would be a supplement to the existing shareholder proposal process, not a substitute for it.

CalPERS testifies before Senate Subcommittee on Problems with GPO, WEP

A Senate Finance Subcommittee hearing on the problems associated with the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) produced vivid instances of the hardships and inequities created by these two provisions for many governmental employees – including California examples offered by CalPERS Board member Priya Mathur. However, the answer to the question of how to pay for the cost of any such repeal -- estimated at around $82 billion over 10 years – remained illusive. As expected, the subject of mandatory Social Security came up, but the difficulties with this as a possible "solution" to the problem, or as a source of revenue with which to pay for repeal, were also underscored. While hearings on legislation to repeal GPO and WEP were mentioned as a possibility for 2008, incremental reform also appeared to be at the heart of some of the questions raised by the Subcommittee's chairman, Senator John Kerry (D-MA), and was even suggested by a chief proponent of repeal as a possible alternative.

On November 6, 2007, the Senate Finance Committee's Subcommittee on Social Security, Pensions, and Family Policy held a hearing on "GPO and WEP: Policies Affecting Pensions from Work Not Covered by Social Security." The Subcommittee's chairman, Senator John Kerry (D-MA), had come under intense pressure to hold such a hearing after saying earlier in the year that he thought the best way to address the problems with GPO and WEP would be in the context of overall reform of the Social Security system.

Senator Kerry, the lone member of the Subcommittee to be active in the hearing, began by stressing the fact that GPO and WEP "often treat public sector employers worse than private sector employees." He also noted how they served to discourage individuals from staying in public service. "Those affected by these exemptions are people that we, as a country, value enormously: they teach our kids, they keep our streets safe, they deliver our mail, and they protect our homes from fires." "We owe them a fair shake and a secure retirement," Senator Kerry said, "and I hope we can use this hearing to explore how best to do that."

The testimony presented by the Government Accountability Office (GAO) explained the rationale for GPO and WEP, but also conceded that the provisions have been difficult to administer because they depend on having complete and accurate information on non-covered earnings and pensions (information that has proven difficult to get, according to the GAO), and have been "a source of confusion and frustration for public employees and retirees."

The GAO documented the cost of repeal: according to current Social Security Administration (SSA) estimates, eliminating the GPO entirely would cost $41.7 billion over 10 years; eliminating the WEP would cost $40.1 billion. Furthermore, the GAO pointed out that if the GPO were eliminated or reduced for spouses who had paid little or no Social Security taxes on their lifetime earnings, it might be reasonable to ask whether the same should be done for dually entitled spouses who have paid Social Security on all their earnings. Otherwise, such couples would be worse off than couples who were no longer subject to the GPO. Since far more spouses are subject to the dual entitlement offset than to the GPO, the GAO warned that the result of eliminating the dual entitlement offset would be even greater than the $41.7 billion for GPO repeal.

As to mandating coverage for all newly hired state and local government employees as a solution, the GAO warned that states and localities could require several years to design, legislate, and implement changes to current pension plans, and mandating Social Security coverage for state and local employees could result in state constitutional challenges. Also, GAO pointed out that mandatory coverage would not immediately address the issues and concerns regarding the GPO and the WEP, as these provisions would continue to apply to existing employees and beneficiaries for many years to come before eventually becoming obsolete. Finally, the GAO noted that state and local governments would have to administer two different systems -- one for existing noncovered employees and another for newly covered employees -- until the provisions no longer applied to anyone or were repealed.

In summary, the GAO said that, as far as mandating universal coverage was concerned, it would promise eventual elimination of the GPO and the WEP, but at potentially significant cost to affected state and local governments, and even so, the GPO and the WEP would continue to apply for many years to come unless they were repealed.

Ms. Mathur, also testifying on behalf of AFSCME, offered specific examples of the adverse impact of the GPO and WEP. Her testimony also stressed that in jurisdictions that don't participate in Social Security, the average total contribution to a public pension can amount to 21 percent of pay or more, compared to a much lower total of only 12.4 percent under Social Security. This disparity is important because, unlike private pensioners whose pension plans are generally financed solely by employers, public pensioners typically put in more than half of the total pension contribution. "Most private pensioners only pay into Social Security, yet they can receive a full pension AND a full Social Security benefit, with no offset of any kind," she explained. "In effect, public pensioners are penalized for their contribution to their own retirement," Ms. Mathur told Senator Kerry.

Furthermore, she reminded him that a public retiree's entire pension is subject to Federal income tax – including the part that is deemed equivalent to Social Security -- while most Social Security benefits are tax-free. This means that the public retiree is effectively hit twice – once with taxes and again with the GPO.

The hearing concluded with testimony from Lawrence H. Thompson, a Senior Fellow with the Urban Institute. He characterized his testimony as a discussion of the public policy problems arising because certain employers do not currently participate in the Social Security program. Thompson dismissed the argument of opponents of mandatory Social Security that they would have to pay a new net cost as a "half-truth." He argued that if the governmental units impacted by such a change "adjusted their benefit package so that new hires would get as much from the combination of Social Security and a supplemental pension as they would have received from the non-covered pension alone (including similar benefits for those retiring before age 62), the new package would increase total pension costs by some 6 to 7 percent of payroll, essentially half of the amount that the entities would be paying in newly imposed Social Security contributions."

Thompson said a better approach to improving coordination between Social Security and those governmental units not now covered by the program would be through an exchange of credits. Under this approach, those state and local employees not now covered by Social Security would, in the future, be entitled to a Social Security benefit. As is currently the case with railroad workers, that benefit would be based on all earnings, both those from their currently uncovered employer and those from other employers that do participate in Social Security. The benefit could be paid either through the Social Security Administration or through their employer's pension organization. Its cost would be shared by their employer and SSA in proportion to the indexed earnings recorded under the respective programs.

Thompson believes that a reform such as this "would allow us eventually to get rid of both the Government Pension Offset and the Windfall Elimination Provision and of the errors introduced by the roughness of the justice each introduces." However, he also concedes "At the same time, it must be acknowledged that the reform would not be costless to affected state and local governments (and/or their employees)."

In the end, it is this issue of cost -- whether that of repeal of the GPO and WEP for the Federal government, or that for state and local governments and their employees as a result of mandatory Social Security – that lies at the heart of this overall problem and any resolution thereof. And as long as the Democratic Congress sticks to its policy of pay-as-you-go, any successful effort to repeal the GPO and WEP will have to confront these cost issues head-on.

Senator Susan Collins (R-ME), one of the original sponsors, along with Senator Dianne Feinstein (D-CA), of S. 206, Senate legislation to repeal GPO and WEP, was also a witness at the hearing. While she urged the Finance Committee to take action on this legislation, she also asked them to "at the very least, take incremental steps toward full repeal to modify the effect of these two unfair provisions." Many public employees and retirees don't want to hear it, but incremental reform may ultimately be the only real political possibility for now, given the seemingly insurmountable cost issues.

AMT Fix Still Unfixed

In November, the House of Representatives passed a short-term fix to stave off the creeping effects of the Alternative Minimum Tax (AMT). However, the pay-as-you-go rules of the Democratic Congress may doom it in the Senate.

The AMT, designed in 1969 to ensure that a few hundred millionaires paid some taxes, lacked an inflation indexing mechanism and now threatens 23 million American taxpayers. The AMT is a stripped down system that excludes or caps the use of deductions commonly used in the "orthodox" tax system with which filers are more familiar. Because the new Congress promised to live by pay-as-you-go rules requiring tax breaks or new spending to be offset, or paid for, by other tax increases or spending cuts, many believe the bill must therefore also raise $50 billion – the amount of revenue loss that the proposed “patch” to the AMT would produce. A permanent repeal of AMT would cost about $800 billion under Congressional math.

In addition to extending for one year AMT relief the bill would also increase the eligibility for the refundable child tax credit for 2008. The legislation would also provide an additional standard deduction for State and local real property taxes paid or accrued by taxpayers who claim the regular standard deduction. Only available in 2008, the maximum amount that may be claimed under this provision would be $700 for joint filers and $350 for individuals.

In response to the current home mortgage crisis, the bill would also create a permanent exclusion from gross income of discharged home mortgage indebtedness of up to two million dollars of indebtedness (on or after January 1, 2007) which is secured by a principal residence and which is incurred in the acquisition, construction, or substantial improvement of the principal residence.

There are also a number of tax credits that are set to expire next year that would receive a one-year extension, from the deduction of State and local general sales taxes for individuals to the R&D credit for businesses.

Of particular interest to investors, the legislation also contains significant changes in the taxation of hedge fund managers and private equity partnerships. First, investment fund managers would be required to treat carried interest as ordinary income to the extent that it does not reflect a reasonable return on invested capital (in which case it could continue to be taxed at capital gains rates.) This proposal is estimated to raise $25.6 billion over 10 years. The bill also would change the treatment of deferred compensation from a “tax indifferent party.” It would effectively prevent hedge fund managers from deferring taxes on compensation received from investment services by using offshore tax haven corporations. This would raise an additional $23.8 billion over 10 years.

The Administration, House Republicans, and the Senate do not support the House approach. Treasury Secretary Hank Paulson said the $77 billion in tax increases in the overall bill would hurt the economy. Paulson’s Assistant Secretary for Tax Policy Eric Solomon opined, “I do not agree this is tax relief. This is relieving taxpayers from a burden they never expected."

Congressman Jim McCrery (R-LA), top Republican on Ways and Means, called the plan “one set of tax increases for another set of tax increases.” At the political level, Congressman Adam Putnam (R-FL), a member of the GOP leadership, saw the plan as an opportunity, saying "The Democrats here in Washington have proven time and again that they approach every public policy issue, every conversation, every debate, with one overriding principle, and that is that tax increases are the rule, not the exception.” Ways and Means Chairman Charles Rangel (D-NY) stands by his plan. “For those people who have been able to be evading the various taxes and avoiding taxes, we're sorry to have to include you in relief for 23 million people, but we think that's fair.”

Senate Majority Leader Harry Reid (D-NV) said that the Senate will abide by the pay-as-you-go rules. But Senate Finance Committee Chairman Max Baucus (D-MT) told reporters that he did not think his panel could pass a provision on carried interest similar to that included by the House.

There is movement among plan detractors to find an alternative to paying for AMT relief, but the chief option seems to be *no*t paying for AMT relief. At the Ways and Means markup of the measure, McCrery offered an unsuccessful amendment to strip out the tax increases, noting that “the only way” to create a bill acceptable to the Senate and the President “is to pass an AMT patch without other tax increases.” “I am concerned that what Mr. McCrery has said here may be the prevailing view on the other side of the Capitol,” Rangel said in response. Supporters of the no-pay approach to AMT relief argue that Congress never intended AMT to reach into the middle class and thus never intended for the tax to bring in so much revenue. If AMT-derived revenue is beyond what Congress imagined, then there is no need to offset money that should never have been there in the first place.

Senate Finance Committee Chairman Max Baucus and Ranking Member Chuck Grassley (R-IA) favor funding the AMT patch by taxing publicly traded partnerships formed after 2012 that receive income from investment advisors at the 35% tax rate, a move that includes some private equity concerns. The Administration continues its commitment to a patch that does not use tax increases for funding, leaving open the question of spending cuts as the remaining way to adhere to pay-as-you-go.

Treasury Secretary Paulson informed Congress that the Internal Revenue Service (IRS) needs to know the rules by mid-November so that it can print instructions for taxpayers; that deadline has passed, with IRS saying that Congressional inaction may slow collection efforts and could also delay $39 billion in tax refunds for millions of Americans for weeks in 2008.

Senate Banking Committee Examines Climate Risk Disclosure

The Senate Banking Committee’s Subcommittee on Securities, Insurance, and Investment held a hearing October 31st on “Climate Disclosure: Measuring Financial Risks and Opportunities” to look at the types of economic risks and opportunities posed by climate change and the connection between climate change and the health of financial markets. CalPERS worked closely with the staff of the Subcommittee Chairman, Senator Jack Reed (D-RI), in the development of this hearing, and Russell Read, CalPERS Chief Investment Officer, was a witness.

As Senator Reed noted, “There is a growing awareness among analysts, investors, businesses, government officials and other stakeholders that climate change can create new opportunities and risks in the financial sector.” Major environmental risks and liabilities “can significantly impact companies’ future earnings and, if undisclosed, could impair investors’ ability to make sound investment decisions,” Senator Reed explained. He also pointed out that at the same time, a corporation or investor “can profit from environmental innovations such as the development of new energy efficient or renewable energy technology.”

The hearing examined how climate risks and opportunities are currently being discussed in corporate financial disclosure statements, with the goal of determining whether or not current disclosure requirements are adequate, or if there is a need for further improvements to assure consistent climate risk disclosure in order for investors to better manage financial risks. In addition to CalPERS, witnesses included Dr. Gary Yohe, Professor of Economics at Wesleyan University; Mr. Jeffery Smith, Partner in Charge of Environmental Practice with Cravath, Swaine, and Moore; and Ms. Mindy Lubber, President of Ceres, with whom CalPERS has worked, both in the United States and abroad, to advocate for improved disclosure of companies’ climate risk.

Mr. Read explained that, as a long-term investor, CalPERS believes that environmental issues can affect the performance of investment portfolios. He underscored that CalPERS is also interested in the sustainability of companies that may be threatened by climate change as well as those that can find “new opportunities in a carbon-constrained market.” “Sustainability is potentially undermined by climate change,” Mr. Read told the Senators, stressing that “This is the concern that drives our environmental investment program.”

CalPERS testimony focused on the need for SEC guidance on or a standardized format for climate risk disclosure. Mr. Read said that voluntary disclosure was commendable, but insufficient for investor needs. “Given the significance of climate risks for many corporations’ financial position and competitive prospects in a new, carbon-constrained environment,” he explained, “ reporting on climate issues is no longer a mere virtue, but a legal obligation and a necessity for investors.”

CalPERS has recently joined several other leading institutional investors in petitioning the SEC to ask it to require publicly-traded companies to assess and fully disclose their financial risks from climate change. Specifically, the SEC should require companies to disclose information on the physical risks associated with climate change – including potential physical damage to facilities; about the financial risks stemming from the present or probable regulation of greenhouse gases, and their prospects for new business opportunities by responding to the changing physical and regulatory environment; and about potential exposure and costs arising from legal proceedings that are related to climate change.

Jeffrey A. Smith, an environmental law partner at Cravath, Swaine & Moore and former chair of the American Bar Association's Committee on Environmental Disclosure, also told the Subcommittee that although voluntary corporate disclosure on climate risks has increased dramatically over the past five years, it was still falling short in meeting the needs of investors and the marketplace. "It would be a mistake,” he said, “to believe that this voluntary activity, no matter how sophisticated and well intentioned, could be a permanent substitute for mandatory reporting." He called on the SEC to use its existing authority eliminate "the wide variation in the depth, quality and format of formal SEC reporting" by companies on climate change.

It is unclear if additional legislation will be needed to prod the SEC into taking further action. A provision to require new SEC regulations mandating public companies to inform shareholders about financial disclosure of and economic impact of global warming on the company has been included in legislation sponsored by Senators Joseph Lieberman (I-CT) and John Warner (R-VA.), to place caps on carbon emissions. The measure has been reported by the Senate Committee on the Environment and Public Works earlier in November, but final action by the Congress on such a bill is questionable.

House Approves Workplace Protections for Gays and Lesbians

The House narrowly approved a measure (H.R. 3685) to guarantee some workplace protections to gay and lesbian Americans. Inclusion of transgendered Americans was dropped as part of the price of picking up votes, including 35 from the GOP side of the aisle.

The Employment Non-Discrimination Act (ENDA) protects employees from being fired for real or perceived sexual orientation, or from not being hired for the same reason. With many potential objections already calculated and countered by the bill's author (Congressman Barney Frank, D-MA, who is openly gay), sexual orientation includes heterosexuality and bisexuality in addition to homosexuality and does not require religious organizations to comply, although State and local government employers are covered under ENDA. Opponents claimed that the legislation would encourage a new wave of lawsuits and that it embodied an intrusive Federal government involving itself where it does not belong; 19 States have enacted laws similar to ENDA.

A Senate companion bill by Health, Education, Labor, and Pensions (HELP) Committee Chairman Ted Kennedy (D-MA), cosponsored by Senator Susan Collins (R-ME), is expected shortly.

New Deferred Comp Enrollment Rules Proposed

The Internal Revenue Service (IRS) released new proposed rules for 401(k), 403(b), and 457 plan automatic enrollment. The Service will accept comments until February 6, 2008 for these rules that will become effective in January 1, 2008.

The proposed rules address qualified automatic contribution arrangement (QACA) concerns arising from the Pension Protection Act (PPA). The release accompanying the proposed rules notes that among the main points of the proposal are "the ability of an employee who has been automatically enrolled under an eligible automatic contribution arrangement to opt out of the arrangement and instead request a distribution of the contributions made during the first 90 days of the arrangement."

Auto-enrollment changes the default position for workers in contributory plans from "no" to "yes." Previous rules required employees to affirmatively opt-in to such plans whereas the new rules allow a qualified arrangement to presume that employees will participate unless they affirmatively notify the plan that they will not.

A QACA must provide a specific schedule for the schedule of automatic contributions to the plan and each contribution must be a minimum of 3% of compensation over an annualized period for the first period of the QACA, which begins when the employee starts participating and ends on the last day of the following plan year. Contribution levels may rise thereafter by 1% of compensation for the next three years to 6% and can continue to increase going forward subject to an absolute cap of 10%.

Previous research indicates that many workers do not take advantage of retirement plans simply due to failure to enroll, or to enroll when first eligible.

California Congressional Delegation

While Washington seemed to slip a bit further into partisan gridlock, Senator Dianne Feinstein (D) and Congressman Jerry Lewis (R) acted swiftly to bring Federal resources to address the devastating California wildfires that rampaged through the State in October. $500 million will be heading to the Golden State to restore property and services, rehabilitate Federal lands damaged by the fires, and reduce the hazard of future fires.

Senator Feinstein said of the aid package: "This funding….will help the Southland recover from devastating wildfires that burned more than 500,000 acres, killed eight, injured more than 100 and destroyed more than 2,000 homes. It will also restore critical firefighting and fire-prevention funding to the U.S. Forest Service and the Interior Department." Congressman Lewis also stressed that prevention had paid off, saying "Amid the terrible destruction caused by our recent fires, federal and state firefighters were convinced that our vigorous fuels-reduction efforts over the past few years saved lives, homes – and federal dollars by allowing a stronger counter-attack against the fires in the San Bernardino Mountains. I am grateful that my colleagues will continue this effort in providing this emergency funding."

Related National and Industry News

SEC Addresses IFRS, Terrorism/Divestment Concerns

The Securities and Exchange Commission (SEC) voted to allow foreign issuers to submit their accounts under the International Financial Reporting Standards (IFRS) accounting system, relieving these companies of the need to keep their books under that system as well as the U.S.' Generally Accepted Accounting Principles (GAAP). The move is seen as part of making the U.S. more welcoming to foreign companies and thus boosting the nation's competitiveness as a financial center. Commission Chairman Chris Cox said that there would be two roundtables in December on the 13th and 17th to discuss whether U.S. issuers should be allowed to use the IFRS standard as well. In its press release explaining the move, the Commission cited the large number of U.S. investors holding foreign securities. "Consistent application of international accounting standards will help the two-thirds of U.S. investors who own foreign securities to understand and draw better comparisons among investment options than they could with a multiplicity of national accounting standards," said SEC Chairman Christopher Cox. The new rules become effective 60 days after publication in the Federal Register and apply to financial years ending after November 15, 2007.

The Commission also further refined its work on tracking companies that deal with regimes identified as State sponsors of terrorism by the State Department, including Cuba, Iran, North Korea, Sudan and Syria. The SEC issued a concept release to propose new solutions after having suspended its earlier efforts at a web-based tool to help investors identify suspect companies. "Investors have told us they want to avoid supporting terrorism directly or indirectly through their investments," Cox said. "Some of the information they need for this purpose is already on file with the SEC. We're interested in ways to help investors find what they're looking for." More information can be found in the SEC's concept release, which discusses whether to reinstate the earlier web tool with some improvements or if there are other ways that SEC data can help investors review their holdings.

While the House has passed a Sudan divestment measure, the Senate has not yet done so, and the Administration opposes the effort as an infringement on the Executive's Constitutional powers to conduct foreign policy.

Separately, conflict has arisen between the trustees for the State of Texas' Employees Retirement System (ERS) and Governor Rick Perry over divestment of State systems from companies tied to Iran. Trustees and others said that yielding to this pressure would bring other demands to divest from other areas that some groups find objectionable; that foreign affairs are the concern of the Federal government, not the States; and that once the money goes into the fund, it ceases to be public and becomes the sole property of participants and retirees.

All Government Branches Involved on Troubled Mortgage Market

The House passed a mortgage overhaul bill by a margin of 291-127 with large numbers of Republicans voting to back the measure by House Financial Services Chairman Barney Frank (D-MA). Opponents of the bill in the lending industry found no champion with Frank's GOP Committee counterpart, Spencer Bachus (R-AL), who also voted for the legislation. The bill, H.R. 3915, establishes new requirements on lenders, such as ensuring that borrowers have a "reasonable" ability to pay and establishing standards for underwriting, and also extends Federal regulations to securitizers. However, reports indicate that the still undrafted Senate bill may take a very different course, and both consumer advocates and lenders will move the battle to the Senate when that language materializes. The final product will still have to satisfy the White House, which is seen as more pro-lender than the Congress.

On another front, H.R. 3609 in the Judiciary Committee would allow bankruptcy judges to modify the terms of a mortgage for those who have declared bankruptcy. Backed by Representatives Brad Miller (D-NC), Linda Sanchez (D-CA/Garden Grove), Financial Services Chairman Barney Frank, and others, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007 generally prohibits creditors from adding fees or charges while the case is pending where the debt is secured by the debtor's principal residence. Judges would be allowed to lower interest payments or forgive part of the debt. Supporters note that bankruptcy judges already have this power when dealing with farms and investment properties, for example, but lenders worry that some consumers may use the bankruptcy courts as a substitute for refinancing and will swell the caseload before these courts. Under the proposal, judges could reset loan principal to the "fair market value" of the property, with the rest becoming an unsecured obligation that lenders likely would never see repaid. Some lender groups say that their members would have to offset these new risks with higher down payments, higher interest rates, or exclude more borrowers with questionable credit.

The Administration recently acted on the mortgage crisis by using the leadership of Treasury Secretary Hank Paulson to assemble a banking group to restore liquidity to the mortgage market. Citigroup, J.P. Morgan Chase, and other banks established a $75 billion "Superfund for wayward securities" reportedly as Paulson convinced them to do a deal that was in their mutual interest yet that none of the institutions would attempt on their own. Some conservative criticism of the fund continues, with American Enterprise Institute senior fellow Kevin Hassett saying, "They're trying to avoid a fire sale on these assets. But sometimes you need to have a fire sale if you've had a fire."

According to the latest economic statistics, government action has not yet reversed trends in the troubled housing market; thus far, the Superfund is the only Federal response to have been put in place. These policy solutions may take several months to take effect, and only then can they be evaluated for effectiveness.